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C.M.A.No.2447 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2447 of 2014

M.Venkataraman

... Petitioner / Appellant

Vs.

1. M/s.Tirupathi Steel Enterprises,
No.3/234-1, Putthur Itteri Road,
K.P.Karadu South, Nethimedu,
Salem District.

2. The Branch Manager,
IFFCO-TOKIOI Insurance Co. Ltd.,
Coimbatore Tulsi Chambers, 3rd Floor
T.V. Swamy Road, R.S.Puram,
Coimbatore – 641 002 .

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2012 made in M.C.O.P.No.464 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Judge Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondents : Mr.C.R.Krishnamoorthy for R2



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J U D G M E N T

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This appeal has been filed by the appellant / claimant to enhance the award in M.C.O.P.No.464 of 2010 on the file of the Motor Accident Claims Tribunal / Special Judge, Krishnagiri, dated 03.04.2012 wherein the Tribunal has awarded a sum of Rs.77,500/- as compensation.

2. The case of the appellant / claimant is that on 28.02.2009 at about 3.30 a.m., he was riding a two-wheeler bearing Registration No.TN-24-3278 towards Kurubarapalli to Anchoor in the NH Road. When he was proceeding near Krishnagiri Namasparai, at that time, a car bearing Registration No.TN-30-AC-4028 belonging to the first respondent driven by its driver in a rash and negligent manner, dashed the back side of the appellant's two-wheeler. Due to the impact, the appellant / claimant has sustained serious injuries. Hence, a criminal case in Crime No.162 of 2009 has been registered under sections 279 and 337 of IPC against the car driver for the injuries sustained by the appellant / claimant. Hence, the appellant / claimant has filed a petition seeking for compensation for a sum of Rs.5,00,000/-.



3. The first respondent has filed its counter before the Tribunal that the driver of the car has driven the car with due care and caution, but the appellant / claimant has driven the vehicle in a rash and negligent manner and all of a sudden has crossed the road, on seeing this, even though, the driver of the car has applied sudden break to avert the accident, but the appellant / claimant came and contacted the car, which resulted in accident.

4. The second respondent has also filed its counter before the Tribunal and disputed the manner in which the accident had taken place and contended that the accident has occurred due to rash and negligent driving of the appellant / claimant and hence, he prays for dismissal of the petition.

5. Before the Tribunal, on the side of the appellant / claimant, PW1 and PW2 were examined and Exs.P1 to P6 were marked and on the side of the respondents, none examined no exhibits marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence held that the accident had occurred due to the rash and negligent driving by the driver of the car belonging to the first



respondent and as an insurer, the second respondent shall pay a sum of Rs.77,500/- as compensation to the appellant / claimant and partly allowed the claim petition. Against the said award dated 03.04.2012 made in M.C.O.P.No.464 of 2010, the appellant has come out with the present appeal on the ground that the Tribunal has not properly awarded the compensation.

7. The learned counsel for the second respondent / Insurance Company submitted that the evidence placed on record only shows that the appellant / claimant has undergone only conservative treatment and no major injury caused to him and hence, there is no disability. The compensation awarded by the Tribunal is for the inconvenience caused to the appellant / claimant due to the injuries and hence, he prays to confirm the award.

8. The appellant / claimant has examined PW2-Doctor to prove his disability sustained by him. PW2 has stated in his cross-examination that the appellant / claimant had suffered fracture of the anterior tibial spine at the right knee and the injury has also resulted several discomforts to him such



as the post traumatic stiffness and the restriction of range of movement, but the same has not been considered by the Tribunal. It is recorded that even a loss of limb cause only 50% disability with respect to the whole body and mere PTS and ROM cannot cause 30% disability with respect to his whole body. Therefore, the Tribunal fixed the disability at 20% as against the disability fixed by PW2-Doctor at 30%.

9. Considering the nature of injuries, this Court is of the view that a meagre amount of Rs.3,000/- is awarded by the Tribunal for Nutritious Food and hence, the same is hereby enhanced to Rs.5,000/-. Similarly, the award of Rs.1,000/- awarded towards Attender Expenses is hereby enhanced to Rs.3,000/-. The Tribunal has not awarded any amount with regard to Transportation and hence, this Court is inclined to fix compensation of Rs.5,000/- for Transportation. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Temporary Disability	Rs.40,000/-	-	Confirmed
2.	Partial Loss of Income	Rs.13,500/-	-	Confirmed
3.	Nutritious Food	Rs.3,000/-	Rs.5,000/-	Enhanced
4.	Attenders Expenses	Rs.1,000/-	Rs.3,000/-	Enhanced
5.	Pain and Sufferings	Rs.10,000/-	-	Confirmed
6.	Loss of Amenities	Rs.10,000/-	-	Confirmed
7.	Transportation	-	Rs.5,000/-	Granted
	Total	Rs.77,500/-	Rs.86,500/-	Enhanced by Rs.9,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.77,500/- is hereby enhanced to Rs.86,500/- together with interest @ 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.464 of 2010 on the file of the Motor Accident Claims Tribunal, Special Judge Krishnagiri. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs,



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less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant, as laid down by the Division Bench of this Court in the case of *The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others* in *C.M.A.No.428 of 2016, dated 11.03.2016* reported in *2016 (2) LW 561*. Since this Court has enhanced the compensation, the appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

29.08.2023

Index :Yes / No
Speaking Order :Yes / No
Neutral Citation Case: Yes / No
vji / stn

To

1. The Motor Accidents Claims Tribunal / Special Judge,
Krishnagiri.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K.RAJASEKAR, J.

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